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## 120.1 Determining Immigration Status



### A. Summary

According to Federal rules, with certain exceptions, only United States Citizens, United States noncitizen nationals and qualified immigrants are eligible for federal, state and local public benefits. This section provides guidance on verification of citizenship, qualified immigrants status and eligibility of noncitizens.

### B. Nondiscrimination and Privacy Requirements:

1. Civil rights laws and regulations prohibit discrimination by governmental and private entities on the basis of race, color, national origin, gender, religion, age, and disability.
2. In particular, Title VI prohibits discrimination on the basis of race, color, national origin in any program or activity, whether operated by a public or private entity, which receives federal funds or other federal financial assistance.

**Note: Profiling is not allowed. You cannot single out individuals who look or sound foreign for closer scrutiny or require them to provide additional documents of citizenship or immigration status.**

3. When implementing verification requirements, use the citizenship and immigration status only for purposes of verifying the **applicant's** eligibility for benefits.
4. Because the process of verifying an individual's status as a U.S. citizen, U.S. noncitizen national or qualified immigrant raises issues involving privacy and anti-discrimination protections, do not verify an applicant's status when benefits are not contingent on the status.
5. **If an immigrant is applying for benefits on behalf of another person, you may, under federal law, only verify the status of the person who will actually receive the benefits.**

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## 120.2 U. S. Citizen or Noncitizen National

- A. Ask for a declaration of citizenship or immigration status. Do not verify an applicant's status as a citizen unless the information provided by the applicant is questionable. After declaring citizenship or immigration status on the application and in the interview process, when an applicant signs the Rights and Responsibilities form, they are declaring their status under penalty of perjury.

**Note: The decision that an individual's declaration of citizenship is questionable must be nondiscriminatory. For example, it cannot be based on the fact that the applicant looks or sounds foreign or has an ethnic surname.**

- B. The law regarding U.S. citizenship and nationality is complex. These broad definitions are provided for general guidance only.
- C. Subject to certain exceptions and qualifications, a United States citizen is:
1. A person (other than the child of a foreign diplomat) born in one of the states, or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands, who has not renounced or otherwise lost his or her citizenship.
  2. A person born outside the United States to at least one U.S. citizen parent (sometimes referred to as a derivative citizen), or
  3. A naturalized U.S. citizen.
- D. A United States noncitizen national is a person born in an outlying possession of the United States. (American Samoa or Swain's Island) on or after the date the United States acquired possession, or a person whose parents are U.S. noncitizen nationals (subject to certain residency requirements).
- E. Verify status if questionable. Evidence of citizenship includes, but is not limited to the following:
1. A birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico, (on or after March 2, 1917), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (on or after November 4, 1986), unless the person was born to foreign diplomats residing in the United States. For persons born in the Northern Mariana Islands before November 4, 1986, the issue can be more complicated, although generally speaking, most such persons living in the Northern Mariana Island became US citizens on November 4, 1986 under Article 3 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America

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## **120.2 U. S. Citizen or Noncitizen National (continued)**

2. United States passport (except limited passport, which is issued for periods of less than 5 years).
3. Reports of birth abroad of a U.S. citizen (FS-240 - Issued by the Department of State to U.S. citizens).
4. Certificate of birth (FS-545 - issued by a Foreign Service post) or Certification of Report of Birth (DS-1350 - issued by the Department of State).
5. Certificate of Naturalization (N-550 or N-570 - issued by the USCIS through a federal or state court, or through administrative naturalization after December 1990).
6. Certificate of Citizenship (N-560 or N-561 - issued by the USCIS to individuals who derive citizenship through a parent).
7. United States Citizen Identification Card (I-197 - issued by the USCIS until April 1, 1983 to U.S. citizens living near the Canadian or Mexican border. Formerly the I-179, which was last issued February 1974).
8. Northern Mariana Identification Card (Issued by the USCIS to a collectively naturalized citizen of the U.S. born in the Northern Mariana Islands after November 4, 1986).
9. Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen (this is given to an individual born outside the U.S. who derives citizenship through a parent but who does not have an FS-240, FS-545, or DS-1350).
10. Derivative Citizenship. If the applicant cannot present one of the documents listed above, make a determination of derivative citizenship in the following situations:
  - (a) Applicant born abroad to two U.S. citizen parents:
    - Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least one of the parents resided in the U.S. or an outlying possession prior to the applicant's birth.
  - (b) Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent:

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## **120.2 U. S. Citizen or Noncitizen National (continued)**

- Evidence that one parent is a U.S. citizen and the other is a U.S. non-citizen national, evidence of the relationship to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, America Samoa, or Swain's Island for a period of at least one year prior to the applicant's birth.

### **11. Applicant born out of wedlock abroad to a U.S. citizen mother:**

Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the applicant's birth, or for births after December 24, 1952, evidence that the applicant's mother had resided prior to the child's birth, in the U.S. or a U.S. possession for a period of one year.

### **12. Applicant born in the Canal Zone or the Republic of Panama:**

- (a) A birth certificate showing the birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen at the time of the applicant's birth, or
- (b) A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor.

### **13. In all other situations where an applicant claims to have a U.S. citizen parent and a non-citizen parent, or claims to fall within one of the above categories, but is unable to present the listed documentation, refer the individual to the USCIS office.**

### **14. Adoption of Foreign-born child by U.S. citizen:**

- (a) If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of U.S. citizenship.
- (b) Since foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, refer the applicant to the local USCIS district office for a determination of citizenship if the applicant provides no evidence of citizenship. (See also #16 below)

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## **120.2 U. S. Citizen or Noncitizen National (continued)**

### **15. U.S. citizenship by marriage:**

- (c) A woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922. Ask for evidence of U.S. citizenship of the husband, and evidence showing the marriage occurred before September 22, 1922.
- (d) If the husband was not a citizen at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her citizenship if she was residing in the U.S. at that time and continued to reside in the U.S.
- (e) For those not married before September 22, 1922, permanent residents who have been married to a U.S. citizen and lived in the U.S. for at least 3 continuous years are eligible to apply for naturalized citizenship.

### **16. Child Citizenship Act of 2000**

- (a) Under the CCA, children automatically acquire U.S. citizenship when all of the following conditions are met:
  - At least one parent is a citizen, either by birth or by naturalization,
  - The child is under 18,
  - The child is not married,
  - The child is a lawful permanent resident, and
  - The child is living in the United States in the legal and physical custody of the citizen parent.
  - If the child is adopted, the adoption must be full and final.
- (b) Children who met the Act's requirements on February 27, 2001 automatically became U.S. citizens as of that date.
- (c) Individuals who were 18 years of age or older on February 27, 2001, or who otherwise did not meet the Act's requirements, do not qualify for automatic citizenship under the CCA. If they wish to become U.S. citizens they must apply with the Bureau of Citizenship and Immigration Services of the Department of Homeland Security. They will receive a certificate of citizenship if they meet the requirements for adult permanent residents.

### **17. When citizenship is questionable and the applicant has lost his or her original documents, or never had an original document to prove citizenship or naturalization, you may accept:**

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## **120.2 U. S. Citizen or Noncitizen National (continued)**

- A written declaration, made under penalty of perjury and possibly subject to later verification of status, from one or more third parties indicating reasonable personal knowledge that the applicant is a U.S. citizens or noncitizen national.

### **F. Action Pending Verification.**

1. The member whose citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained.
2. Include the income of the member whose citizenship is questionable, less a pro rata portion. Include all the resources of the member as available to the remaining household members.

## **120.3 Qualified Immigrants**

### **A. Except as described in 120.11 - American Indians, Afghan or Iraqi Special Immigrants and Hmong or Highland Laotians, a noncitizen must be both a qualified immigrant (alien) and meet certain other eligibility requirements.**

A qualified immigrant is:

1. An immigrant lawfully admitted for permanent residence (LPR) under the Immigration and Nationality Act (INA).
2. An immigrant granted asylum under §208 of the INA
3. A refugee admitted under §207 of the INA.
4. An immigrant who is paroled under §212(d)(5) of the INA for a period of at least 1 year
5. An immigrant whose deportation is being withheld under §§243(h) or 241(b)(3) after April 1, 1997 of the INA
6. An immigrant who is granted conditional entry pursuant to §203(a)(7) of the INA
7. Certain battered immigrant spouses and children (see section 120.13)
8. Cuban and Haitian entrants
9. Iraqi and Afghan Special Immigrants (SIVs).

### **B. Request Documentation of Immigration Status. The documents that will demonstrate that an applicant is a “qualified immigrant” are:**

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### **120.3 Qualified Immigrants (continued)**

1. Alien Lawfully Admitted for Permanent Residence.
  - (a) INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card"); or
  - (b) Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94
2. Asylee
  - (a) INS Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA;
  - (b) INS Form I-688 B (Employment Authorization Card) annotated "274a.12(a)(5)" from before October 1, 2006;
  - (c) INS Form I-766 (Employment Authorization Document) annotated "A5";
  - (d) Grant letter from the Asylum Office of INS; or
  - (e) Order of an immigration judge granting asylum.
3. Refugee
  - (a) INS Form I-94 annotated with a stamp showing admission under section 207 of the INA;
  - (b) INS Form INS Form I-688 B (Employment Authorization Card) annotated "274a.12(a)(3)";
  - (c) INS Form I-766 (Employment Authorization Document) annotated "A3"; or
  - (d) INS-Form 571 (Refugee Travel Document).
4. Immigrant Paroled into the U.S. for a Period of at Least one Year  
INS-Form I-94 with stamp showing admission for least one year under section 212(d)(5) of the INA. (The applicant cannot aggregate periods of admission for less than one year to meet the one year requirement).
5. Immigrant Whose Deportation or Removal was Withheld
  - (a) INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(10);
  - (b) INS Form I-766 (Employment Authorization Document) annotated "A10"; or
  - (c) Order from an immigration judge showing deportation withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under section 241(b)(3) of the INA.
6. Immigrant Granted Conditional Entry
  - (a) INS Form I-94 with stamp showing admission under section 203(a)(7) of the INA;
  - (b) INS Form I-688 B (Employment Authorization Card) annotated "274a.12(a)(3)"; or
  - (c) INS Form I-766 (Employment Authorization Document) annotated "A3."

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### 120.3 Qualified Immigrants (continued)

7. Cuban/Haitian Entrant
  - (a) INS Form I-551 (Alien Registration Card) with a code CU6, CU7, or CH6;
  - (b) Unexpired temporary I-551 stamp in a foreign passport or on INS Form I-94 with the code CU6 or CU7; or
  - (c) INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.
8. Immigrant who has been Battered or Subjected to Extreme Cruelty Guidance (See manual section 120.13).
9. Iraqi and Afghan Special Immigrants (SIVs) - The Department of Defense Appropriations Act of 2010 (Section 8120, P. L. 111-118) enacted on December 19, 2009, provides that Iraqi and Afghan Special Immigrants (SIVs) are eligible for federal public benefits to the same extent and for the same time period as refugees.

- C. If supported by documents, conclude that the applicant is a "qualified immigrant." If the documentation appears to be genuine and to relate to the individual presenting it, accept the document as conclusive evidence that the applicant is a qualified alien. Do not further verify immigration status with USCIS, except through the Systematic Alien Verification Entitlements (SAVE) procedures.
- D. If, based on documents presented, you conclude that an applicant is not qualified because the document does not appear to be genuine or to relate to the person presenting the document, check with USCIS to verify the information.

**Always verify the applicant's status before determining that an applicant is not a qualified immigrant. Do not deny benefits without first verifying the applicant's status.**

First, check the status through the USCIS SAVE system. If necessary, initiate secondary procedures by filing with the local USCIS office an USCIS Form G-845 and Supplement along with copies of immigration documents provided by the applicant.

- E. Expired or Absent Documentation
  1. If an applicant presents an expired document or is unable to present any documentation to verify his or her immigration status, refer the applicant to the district USCIS office to obtain the documentation.



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### 120.3 Qualified Immigrants (continued)

2. In unusual cases involving applicants who are hospitalized or disabled, or who can otherwise show good cause for their inability to present the documentation, and for whom securing the documentation would constitute undue hardship, make every effort to help the applicant verify immigration status. If the applicant can provide an alien registration number, file USCIS Form G-845 and the Supplement, along with the registration number and a copy of any expired USCIS document, with the local USCIS office.
3. If an applicant presents a receipt indicating he or she has applied to the USCIS for a replacement document for one of the documents listed above, file USCIS form G-845 and Supplement along with the copy of the receipt with the local USCIS office.

#### F. Submitting Verification Requests to USCIS

Use USCIS Form G-845, with the supplemental form to obtain more detailed information on immigration status, citizenship, and sponsorship. (Use the supplemental form only in conjunction with Form G-845, not separately.)

Mail to the Baltimore Field Office at:

United States Citizenship and Immigration Service  
3701 Koppers Street  
Baltimore, MD 21227  
ATTN: Immigration Status Verifier

### 120.4 Immigrants who have lived in the United States for five years

- A. Immigrants who have lived in the US as **qualified immigrants for five years** or more meet immigrant eligibility requirements.
- B. The five-year waiting period begins on the date the immigrant obtains status as a qualified immigrant.
- C. If qualified immigrant status is granted retroactively the retroactive time counts toward the 5-year requirements.
- D. A qualified immigrant who is eligible under 120.5 - asylees, refugees, Amerasians, Cuban/Haitian entrants, trafficking victims and immigrants whose deportation is withheld are eligible.

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## **120.5 Immigrants Eligible during the 5-Year Ban on Immigrant Eligibility**

The 5-year waiting period (bar) does not apply to the following immigrants. Immigrants who:

- A. Were admitted under §207 of the INA as a refugee,
- B. Were a victim of severe trafficking in persons,
- C. Were granted asylum under §208 of the INA,
- D. Had deportation or removal withheld under §§243(h) or 241(b)(3) of the INA,
- E. Were admitted as a Cuban and Haitian immigrant as defined in §501(e) of the Refugee Education Assistance Act of 1980, or
- F. Were admitted as an Amerasian pursuant to §584 of the Foreign Operations, Export, Financing, and Related Programs Appropriations Act of 1988.

## **120.6 Immigrant Children**

- A. Qualified immigrant children, who are under 18 years of age, are eligible for food the FSP, regardless of how long they have been in the US.

**Example:** Child A is an LPR and is age 17. He may receive FS benefits until he turns age 18, then he is ineligible, unless he has been in the country for 5 years or more.

- B. Sponsor deeming requirements do not apply to sponsored children who are younger than 18 years old.  
Reminder: Do not count the deemed income or resources of a sponsor as available to any immigrant who is not eligible for FS.
- C. Prorate the income and resources of an immigrant child's parents who are not part of the FS household as available to the child.
- D. Except for American Indians and Hmong or Highland Laotians, children who are not qualified immigrants are not eligible for FS.
- E. Case managers must track the age of immigrant children when an immigrant child receiving FS will turn 18 during the certification period.

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## **120.6 Immigrant Children (continued)**

- F. Before removing an immigrant child from the FS when the child turns 18 re-evaluate the FS eligibility to determine if the child continues to be eligible.
- G. An immigrant child turning 18 may continue to receive TCA but may not be eligible for FS because the child has not been in the US for 5 years.

Example 1: John Smith moved to the United States with his parents and sister in June 2014. The children received FS as qualified immigrant children, even though the parents were not eligible. John turned 18 March 2015 and is no longer eligible for FS because he has not been in the United States for at least five years.

Example 2: Mrs. Jones gets TCA for her 17-year old and 5-year old grandchildren. The children were admitted as legal permanent residents March 2013. Mrs. Jones has lived in the United States as a qualified immigrant since March 1997 and gets SSI. They were all found to be eligible for food stamps in October 2014 and certified for 12 months beginning in October. In January, the older grandchild turned 18. The case manager sets up an alert as a reminder to remove the child from the FSP household. The grandchild is no longer eligible for FSP benefits but still meets the TCA eligibility requirements.

## **120.7 Disabled immigrants**

Disabled immigrants who are receiving payments or assistance for blindness or disability (as described below) regardless of date of entry or when they became disabled are eligible for FS. For the purposes of these provisions, a disabled individual is one of the following:

- A. A person who receives Supplemental Security Income (SSI) under title XVI of the Social Security Act, or federally or State administered supplemental benefits of the type described in section 212(a) of Public Law 93-66.
- B. A person who receives federally or State administered supplemental assistance of the type described in section 1616(a) of the Social Security Act, interim assistance pending receipt of SSI, disability-related medical assistance, or disability-related general assistance under title XIX of the Social Security Act. Immigrants who receive Public Assistance to Adults (PAA) and TDAP recipients who receive Medical Assistance fall under this category.
- C. A person who receives disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act or receives disability retirement benefits from a governmental agency because the disability is considered permanent under section 221(i) of the Social Security Act

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D. A person who receives an annuity under section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon criteria under title XVI of the Social Security Act.

E. A veteran who:

1. Has a service connected or non-service-connected disability that is rated total, or
2. Is considered in need of regular aid and attendance or permanently housebound.

F. A surviving spouse of a veteran and:

1. Is considered in need of regular aid and attendance or permanently housebound, or
2. Is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, USC, and has a disability considered permanent.

G. A child of a veteran and:

1. Is considered permanently incapable of self-support, or
2. Is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, United States Code, and has a disability considered permanent.

Example: Mr. and Mrs. A are legal permanent residents (LPR) and receive SSI. They have lawfully lived in the U.S. since 1990. They are eligible to receive federal Food Supplement Program (FSP) benefits if they meet all other eligibility requirements.

Example: Mr. D has been an LPR since 1989. In February 1998 he began receiving SSI. He is eligible for federal FSP benefits if he meets all other eligibility requirements.

## **120.8 Elderly Immigrants Lawfully residing in the US on August 22, 1996**

Elderly qualified immigrants (see section 120.3) who were lawfully residing in the United State on or before August 22, 1996 and who were 65 years of age or older (born on or before 8/22/31) on August 22, 1996 are eligible for FSP benefits.

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## 120.8 Elderly Immigrants (continued)

Examples:

Mr. B was born 5/05/30. He was an LPR on August 22, 1996. He is eligible for FSP benefits.

Mrs. C was born 2/20/29. She was admitted to the U.S. as an LPR on October 3, 2003. She does not meet the criteria for FSP eligibility.

## 120.9 Work Quarters

**An immigrant lawfully admitted for permanent residence as defined in Section 101(a)(2) of the Immigration and Nationality Act (INA) and can be credited with at least 40 quarters of qualified work.**

- A. This includes earnings reported to the Social Security Administration and earnings not reported to the Social Security Administration if the individual can verify the earnings.
- B. A qualifying quarter includes one worked by a parent of an immigrant before the date on which the child turned age 18 and a quarter worked by a spouse during the marriage if the immigrant remains married to the spouse or the spouse is deceased.
- C. If a husband and wife both worked, combine the quarters worked during the marriage if they remain married or if the spouse is deceased.
- D. Beginning January 1, 1997, do not count a quarter in which the immigrant received any federal means-tested public benefit as a qualifying quarter. Federal means-tested programs are Medical Assistance (including MA for Pregnant Women and Children and Maryland Children's Health Program), Temporary Cash Assistance, Supplemental Security Income, and the Food Supplement Program. This also applies to crediting a parent's or spouse's quarters if the parent or spouse received a means-tested benefit.

The case manager must evaluate quarters of coverage and receipt of federal means-tested benefits on a calendar year basis as follows:

1. Determine the number of quarters creditable in a calendar year.
2. Identify those quarters after January 1, 1997, in which the immigrant, or spouse or parent of the immigrant received a means-tested benefit.
3. Remove those quarters from the number of quarters of coverage earned or credited to the immigrant in that calendar year.

Exception: If the immigrant earns the 40<sup>th</sup> quarter of coverage prior to applying for FSP benefits or any other means-tested benefit in that same quarter, allow that quarter toward the 40 qualifying quarters total.

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## 120.10 Military Connection



**A veteran or person on active duty in the U.S. armed forces or spouse or unmarried dependent child of a veteran or person on active military duty.**

- A. The veteran or active duty person can be a citizen or an immigrant.
- B. Definition of Dependent child. A dependent child of a veteran is an unmarried biological or legally adopted dependent child who is:
  1. 17 years old or younger
  2. 21 years old or younger and a full time student, or
  3. Disabled and 18 years old or older if the child was disabled and dependent on the individual described in A prior to the child's 18<sup>th</sup> birthday.  
This definition also includes a child of a deceased veteran parent if the child was dependent on the parent prior to the child's 18<sup>th</sup> birthday.
- C. The following categories of immigrants with a military connection are eligible for an unlimited period:
  1. An immigrant lawfully admitted for permanent residence under the Immigration and Nationality Act (INA).
  2. An immigrant granted asylum under §208 of the INA
  3. A refugee admitted under §207 of the INA.
  4. An immigrant who is paroled under §212(d)(5) of the INA for a period of at least 1 year
  5. An immigrant whose deportation is being withheld under §§243(h) or 241(b)(3) after April 1, 1997 of the INA
  6. An immigrant who is granted conditional entry pursuant to §203(a)(7) of the INA
  7. Certain battered alien spouses and children. The non-abusive parent of a battered child may also be eligible. The battered individual must provide verification of being battered and of having petitioned USCIS for permanent residence status. Any reasonable evidence of battery is sufficient, including police reports, information from medical or school personnel, or photographs. The battered individual also has to verify that he or she no longer lives in the same household as the batterer.

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## 120.10 Military Connection (continued)

- D. A veteran must have met the minimum active-duty service requirements of 24 months or the period for which the person was called to active duty.
- E. The definition of veteran includes military personnel who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while the forces were in the service of the Armed forces of the United States, or in the Philippine Scouts.
- F. A surviving spouse of a deceased veteran or individual on active duty is eligible, provided the spouse has not remarried and the marriage meets certain requirements. They must have been married:
  - 1. For at least one year, or
  - 2. Before the end of a 15-year time span following the end of the period of military service in which the injury or disease was incurred or aggravated, or
  - 3. For any period if a child was born of the marriage or before the marriage.
- G. Verification
  - 1. Honorably Discharged Veterans
    - (a) A discharge certificate, DD Form 214 or equivalent, that shows active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard and character of discharge "Honorable" is acceptable to qualify for the veteran exemption without further inquiry unless the certificate appears to be altered.
    - (b) A discharge certificate that shows character of discharge as anything but "Honorable" is not acceptable for purposes of this exemption. Do not refer them to the Veterans Administration (VA).
    - (c) Character of discharge "Under Honorable Conditions" is **not** an "Honorable" discharge for these purposes.
    - (d) If a discharge certificate that shows "Honorable" and any branch of service other than the Army, Navy, Air Force, Marine Corps, or Coast Guard or any other type of duty, refer to the local VA regional office for a determination of veteran status.
    - (e) If veteran status is claimed but the individual has no papers showing service or discharge, refer the inquiry to the local VA regional office.

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## **120.10 Military Connection (continued)**

- (f) If a discharge certificate, DD Form 214 or equivalent, shows an original enlistment in the Army, Navy, Air Force, Marine Corps, or Coast Guard before September 7, 1980, there is no minimum active-duty service requirement. If a discharge certificate shows two or more years of continuous active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard, the individual meets the minimum active-duty service requirement. If a discharge certificate is not available or if it shows active-duty service of less than two years with an original enlistment after September 7, 1980, refer the inquiry to the VA regional office.
- (g) Applications for exemption based on status as a spouse, unmarried dependent child, or unremarried surviving spouse of an honorably discharged veteran require a determination of the veteran's status and a determination that the applicant is a spouse or child. Status of the veteran may be established using the discharge certificate. If the applicant is not in possession of a discharge certificate, refer the question of veteran status to the VA for a determination. Verify marriage and dependency if questionable.
- (h) Applications for exceptions based on status as an unremarried surviving spouse of a veteran or active-duty personnel further require the following findings, in addition to a determination that the spouse has not remarried:
  - (i) That the surviving spouse was married to the veteran or active-duty personnel within 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated;
  - (ii) That the surviving spouse was married to the veteran or active-duty personnel for one year or more; or
  - (iii) That a child was born of the relationship between the surviving spouse and the veteran or active-duty personnel, either during or before the marriage.

### **2. Members on Active Duty**

- (a) Active duty as a member of the Armed Forces means an individual is on full time duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard. It does not include full time National Guard Duty.
- (b) Service members on active duty shall establish their status by presenting a current Military Identification Card, DD Form 2 (Active), that lists an expiration date of more than one year from the date of the determination.



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## **120.10 Military Connection (continued)**

- (c) If the Military Identification Card is due to expire within one year from the date of the determination, ask the individual to provide a copy of his or her current military orders. If the individual cannot provide the orders, active duty may be verified through RAPIDS (Real Time Automated Personnel Identification System) at [https://www.dmdc.osd.mil/self\\_service/rapids/https/](https://www.dmdc.osd.mil/self_service/rapids/https/) or by notifying the online service to update the Defense Enrollment Eligibility Reporting System (DEERS) at <https://www.dmdc.osd.mil/milconnect/>

### **3. Reserve Members**

- (a) “Active duty for training” is temporary full-time duty in the Armed Forces performed by members of the Reserves, Army National Guard, or Air National Guard for training and does not establish eligible status. However, a discharge from active duty for training may establish veteran status and should be referred to VA for a determination.
- (b) A Member of a Reserve Component shall establish status by showing a current DD Form 2 (Reserve), and military active duty orders showing the individual is on active duty, but not on active duty for training. This is the only method for verifying this status.

### **4. Spouse, Children, or Unremarried Surviving Spouse of Active Duty Members or Veterans**

- (a) Step 1: Establish that the individual is a spouse, dependent child or unremarried surviving spouse of an active duty member or veteran.
- (i) If questionable, verify the relationship with a marriage license and/or birth certificate. Consider as evidence of marriage the possession of a current Military Identification Card showing that the individual is married to a veteran or active duty member. Possession of a Military ID may also be considered evidence that a child is dependent on a veteran or active duty member of the Armed Forces for his or her support and is under age 18 or if a full time student, under age 22.
- (ii) In making the determination as to whether an individual is an unremarried surviving spouse of an active duty member or a veteran the local department must determine that the surviving spouse has not remarried and the following:

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## **120.10 Military Connection (continued)**

- (iii) That the surviving spouse was married to the veteran or active-duty personnel within 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated;
  - (iv) That the surviving spouse was married to the veteran or active-duty personnel for one year or more; or
  - (v) That a child of the surviving spouse and the veteran or active-duty personnel was born either during or before the marriage.
- (b) Step 2: Determine that the member is on active duty or a veteran.
  - (i) A spouse or child in possession of a current Military Identification Card, with an expiration date of more than one year from the date of its presentation presumptively meets the active duty requirement for his or her spouse or parent respectively.
  - (ii) If the Military Identification Card is due to expire within one year, the spouse or child must provide a copy of the current military orders for his or her spouse or parent to establish the active duty status of the service member. If married to a reserve member or if an unmarried child of a reserve member, the orders must show that the service member is on active duty and not on active duty for training.
  - (d) If the dependent cannot provide the military orders, status may be verified through RAPIDS (Real Time Automated Personnel Identification System) at [https://www.dmdc.osd.mil/self\\_service/rapids/https://](https://www.dmdc.osd.mil/self_service/rapids/https://) or by notifying the online service to update DEERS at <https://www.dmdc.osd.mil/milconnect/>.
- 5. A spouse or child showing a discharge certificate, DD Form 214 or equivalent, that shows active duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard and character of discharge "Honorable" has provided acceptable evidence to establish the veteran status of a spouse or parent. If it appears the certificate is altered further inquiry is needed. If veteran status is claimed, but the spouse or child does not have papers showing service or discharge, refer to the local VA regional office for a determination.

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## **120.11 American Indians, Iraqi and Afghan Special Immigrants and Hmong or Highland Laotians**

The following immigrants are eligible for an indefinite time, even if they are not qualified immigrants:

- A.** American Indians born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply and members of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act. This provision was intended to cover Native Americans who are entitled to cross the United States border into Canada or Mexico.
- B.** The Department of Defense Appropriations Act of 2010 (Section 8120, P. L. 111-118) enacted on December 19, 2009, provides that Iraqi and Afghan Special Immigrants (SIVs) are eligible for federal public benefits to the same extent and for the same time period as refugees.
  - This legislation provides that SIVs are eligible for all available benefits to the same extent and for the same period of time as refugees pursuant to Section 207 of the Immigration and Nationality Act.
  - Provided that other eligibility requirements are met, refugees are eligible for benefits indefinitely.
- C.** Individuals who are lawfully residing in the United States and were members of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to the United States personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975. The spouse or unremarried surviving spouse and unmarried dependent children may also be eligible for FSP benefits.
- D. Definition of Dependent Child.** A dependent child of a Hmong or Highland Laotian is an unmarried biological or legally adopted dependent child who is:
  1. 17 years old or younger
  2. 21 years old or younger and a full time student, or
  3. Disabled and 18 years old or older if the child was disabled and dependent on the individual described in A prior to the child's 18<sup>th</sup> birthday.

This definition also includes a child of a deceased Hmong or Highland Laotian parent if the child was dependent on the parent prior to the child's 18<sup>th</sup> birthday.

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## 120.12 Immigrants who are Victims of Severe Trafficking in Persons

- A. The Office of Refugee Resettlement (ORR) has certified a number of individual immigrants as adult victims of a severe form of trafficking. These individuals are eligible to apply for public benefits and services to the same extent as refugees, per Public Law 1063-386 Trafficking Victims Protection Act of 2000.
- B. When a victim of a severe form of trafficking applies for benefits, the local department should follow their normal procedures for refugees **except agencies should:**
  1. Accept the original certification letter or letter for children in place of USCIS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (Do use SAVE.)
  2. Prior to the provision of benefits, benefit-issuing agencies must call the toll-free **trafficking** victim **verification line** at 1-866-401-5510 to confirm the validity of the certification letter or similar letter for children and to notify ORR of the benefits for which the individual as applied.
  3. Note the “entry date” for refugee benefits purposes. The individual’s “entry date” for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.
  4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria.
  5. Record the expiration date of the certification letter or letter for children so that benefit-granting agencies will be prepared to conduct re-determinations of eligibility at that time.

## 120.13 Immigrants who have been Battered or Subjected to Extreme Cruelty

Certain categories of immigrants who have been subjected to battery or extreme cruelty in the United States by a family member with whom they live are considered qualified immigrants. An immigrant whose child or an immigrant child whose parent has been abused is also a qualified immigrant. Additionally, other sections of the legislation exempt this group from the deeming requirements for a period of one year, or longer in certain circumstances. Section II of Information Memo 99-51- Guidance for Verification of Immigrant Status includes detailed information about the documentation available to battered immigrants.

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### **120.13 Immigrants who have been Battered or Subjected to Extreme Cruelty (continued)**

**Reminder: Status as a battered immigrant will make the battered applicant, the battered applicant's children or the parent of a battered child a qualified immigrant and eligible for certain public benefits. It will not make them eligible for all federal public benefits. An applicant who is a qualified immigrant must meet the eligibility criteria for the Food Supplement Program.**

#### **A. Procedures for Determining Qualified Immigrant Status under this Provision:**

An immigrant is a qualified alien under this provision if he or she meets **all** of the following four requirements:

##### **1. Requirement 1: Appropriate USCIS Status.**

##### **(a) Determine that the USCIS or the Executive Office for Immigration Review (EOIR), as applicable:**

- (i) Has approved an applicant's petition or application filed by or on behalf of the immigrant the immigrant's child or the parent of an immigrant child, or
- (ii) Has found that the applicant has provided adequate evidence to establish extreme cruelty or abuse (prima facie case) under one of the provisions of the INA.

##### **(b) Documentation.**

Ask the immigrant to provide documentation demonstrating his or her immigration status. See Section 120.3 for detailed information about documents.

##### **(c) Because of the nature of abusive relationships, applicants may not have copies of the documents that have been filed by them or on their behalf.**

- (i) If the applicant has some documentation, but it is insufficient to demonstrate filing, establishment of a prima facie case or approval of a petition, check the case status at <https://egov.uscis.gov/casestatus/landing.do>, or mail your request to USCIS Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001.

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- (ii) If the applicant has no documentation but is certain his or her spouse or parent filed a petition, use USCIS Form G-845, with the supplemental form to obtain more detailed information on immigration status, citizenship, and sponsorship. (Use the supplemental form only in conjunction with Form G-845, not separately.)

Mail to the Baltimore Field Office at:

United States Citizenship and Immigration Service  
3701 Koppers Street  
Baltimore, MD 21227  
ATTN: Immigration Status Verifier

- (iii) . If the applicant has no documentation and is uncertain whether a petition has been filed on his or her behalf, refer the individual to the National Domestic Violence Hotline at 1-800-799-7233.
- (d) Without having filed a petition, but with facts indicating a basis to file, refer the applicant to the USCIS forms request line at 1-800-870-3676 and to the National Domestic Violence Hotline.

## 2. Requirement 2: Battered or Subjected to Extreme Cruelty.

- (a) Determine whether an applicant, his or her child, or, in the case of an immigrant child, his or her parent, has been subjected to extreme cruelty (as defined below) as follows:
  - (i) In the case of an immigrant: the abused immigrant has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the immigrant, or by a member of the spouse or parent's family residing in the same household as the immigrant, if the parent or spouse consents to or acquiesces in the battery or cruelty.
  - (ii) When the immigrant's child is abused: the immigrant's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the immigrant, or by a member of the spouse or parent's family residing in the same household if the spouse or parent consents to or acquiesces in the battery or cruelty, and the immigrant did not actively participate in the battery or cruelty;
  - (iii) When the immigrant child's parent is abused: the immigrant child's parent has been battered or subjected to extreme cruelty in the U.S. by the parent's spouse or by a member of the spouse's family residing in the same household as the parent, if the spouse consents or acquiesces in the battery or cruelty;

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**(iv) 120.13 Immigrants who have been Battered or Subjected to Extreme Cruelty (continued)**

Note: Some applicants may possess documents demonstrating that they have been admitted to the United States because of battery or extreme cruelty that occurred outside the U.S. This is insufficient by itself to make them eligible for benefits under this section.

**(b) Definitions of Battery, Extreme Cruelty and Family Member.**

- (i) The phrase “battered or extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation or incest, or forced prostitution are considered acts of violence. Acts or threatened acts that may not initially appear to be violent may be part of an overall pattern of violence. This is a broad, flexible definition that encompasses all types of battery and extreme cruelty.
- (ii) Regard as acts of violence the above actions whenever they occur, so long as one or more acts of violence take place in the United States and while the family relationship between the abuser and the victim exists.
- (iii) The phrase “member of the spouse or parent’s family” means any person related by blood, marriage, or adoption to the spouse or parent of the immigrant, or any person having a relationship to the spouse or parent that is covered by the civil or domestic violence statutes of the State where the immigrant lives, or the State in which the immigrant, the immigrant’s child or the immigrant child’s parent received a protection order.

**(c) Applicant with EOIR Order from the Executive Office for Immigration Review (EOIR) within the Department of Justice (DOJ) or Approved USCIS Petition or Other Court Order Based on Battery**

- (i) Applicants with approved petitions meet the requirement of demonstrating battery or extreme cruelty.
- (ii) A protection order or record of criminal conviction against the appropriate family member satisfies the battery or extreme cruelty requirement.

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### **120.13 Immigrants who have been Battered or Subjected to Extreme Cruelty (continued)**

(iii) All other applicants must provide evidence of abuse. Consider any credible evidence provided by the applicant.

#### **3. Requirement 3: Substantial Connection between Battery and the Need for Benefits.**

(a) Determine whether there is a substantial connection between the battery or extreme cruelty and the need for the public benefit for which the immigrant applied. This requirement is not satisfied simply by a determination that an applicant has been subjected to battery or extreme cruelty. The following situations are provided as guidance in making substantial connection determinations:

- (i) Where the benefits are needed to enable the immigrant or the immigrant's child to become self-sufficient following separation from the abuser;
- (ii) Where the benefits are needed to enable the immigrant or the immigrant's child to escape the abuser or community in which the abuser lives, or to ensure the safety of the immigrant or the immigrant's child from the abuser;
- (iii) Where the benefits are needed due to a loss of financial support resulting from the separation of the immigrant or the immigrant's child from the abuser;
- (iv) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the abuse or from legal proceedings related to the abuse cause the immigrant or the immigrant's child to lose his or her job or require the immigrant or the immigrant's child to leave a job for safety reasons;
- (v) Where the benefits are needed because the immigrant or the immigrant's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;
- (vi) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the immigrant's ability to care for his or her children;



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### **120.13 Immigrants who have been Battered or Subjected to Extreme Cruelty (continued)**

- (vii) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser
  - (viii) Where medical coverage or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.
4. Requirement 4: Battered Applicant no Longer lives in the Same Household with the Batterer.
- (a) Before providing benefits, you must first determine that the battered applicant, child or parent no longer resides in the same household or family eligibility unit as the batterer. Although an applicant is not a qualified alien eligible for benefits until the battered immigrant or child, or parent leaves the home of the abuser, an applicant may need assurances of the availability of benefits in order to leave the batterer and survive independently.
  - (b) Consider any credible evidence supporting the claim of non-residency, including, but not limited to, any of the following:
    - (i) A civil protection order requiring the batterer to stay away from the immigrant or immigrant's child, or evicting the batterer from the applicant's residence,
    - (ii) Employment records,
    - (iii) Utility receipts,
    - (iv) School records,
    - (v) Rental records,
    - (vi) Hospital or medical records,
    - (vii) Affidavit from a staff member at a shelter for battered women, friends or other third parties who know of the situation, or from the battered applicant.

#### **B. Exemptions from Deeming Requirements for Battered Immigrants**

1. Federal rules provide an exception from sponsor deeming for certain battered spouses and children. It allows for a one-year exception from the deeming provisions for LPR spouses and children who have been battered or subjected to extreme cruelty in the United States by their spouses or parents, or by another family member residing in the household who was allowed to commit the acts. The battery or cruelty must have a substantial connection to the need for the public benefits. The spouse or child subjected to cruelty must not be living with the person who committed the abusive acts.

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### **120.13 Immigrants who have been Battered or Subjected to Extreme Cruelty (continued)**

2. The battered spouse exception may extend beyond the initial one-year period, if the USCIS, a judge or an administrative law judge formally recognize that the battery or extreme cruelty occurred. The local department must also determine that the abuse continues to have a connection with the spouse or child's need for benefits.

### **120.14 Verification of Immigration Status**

- A. Based on the application, determine if members identified as non-citizens are eligible by requiring verification for each immigrant member.

#### **B. Documentary Evidence Of Status For FSP Eligibility**

##### **1. General Information**

- (a) Under the INA, all immigrants over the age of 14 who remain in the U.S. for more than 30 days are required to register with the Immigration and Naturalization Service and obtain an alien registration document.
- (b) Immigrants over the age of 18 who receive a registration document are required to carry it at all times, with certain exceptions (e.g., Canadian visitors).
- (c) Immigrants entering the U.S. are normally issued a registration document on entry.
- (d) The documents listed below that are registration documents are indicated with an asterisk (\*). The documents listed below demonstrate lawful status, and you should not require presentation of a registration document if the applicant presents one of the other legally acceptable documents that reasonably appears to be genuine.
- (e) If the document is questionable because it does not appear to be genuine, or does not relate to the person presenting it, ask the applicant to produce his or her registration document as additional evidence of immigration status.

#### **Note:**

**The request for additional documentation cannot be made for a discriminatory reason.**

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## 120.14 Verification of Immigration Status (continued)

2. Immigrant Lawfully Admitted for Permanent Residence (LPR) who has worked or can be credited with 40 qualifying quarters or who is otherwise eligible.
  - (a) LPR documents
    - (i) \*INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card"); or
    - (ii) Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.
  - (b) 40 Qualifying Quarters:
    - (i) If 40 qualifying quarters of coverage are needed for a permanent resident immigrant to qualify, verify through the Quarters of Coverage History System (QCHS) in the State Verification Exchange System (SVES).
    - (ii) Make sure the SSA Consent for Release of Information is on file in the case record when requesting a QC history for Social Security numbers that are not assigned to the applicant (i.e. parent or spouse of the applicant).
    - (iii) **DO NOT send the customer directly to the SSA office for this information.**
  - (c) LPR who is Otherwise Eligible
 

An LPR who does not have 40 qualifying quarters is eligible if he or she:

    - (i) Originally entered the U.S. as a refugee, was granted asylum, or had his or her deportation or removal withheld within the period of time appropriate to each program requirement.
    - (ii) If the applicant states he or she was admitted as a refugee, review the INS Form I-551 for code RE-6, RE-7, RE-8, or RE-9. Determine the date of admission from the date on the card.
    - (iii) If an applicant states he or she was granted asylum or had deportation or removal withheld, file INS form G-845 along with a copy of the I-551.
    - (iv) Is an honorably discharged veteran who fulfilled minimum active duty service requirements, or is a person on non-training active duty or is the spouse, dependent child, or unremarried spouse. Ask for documentation from the Veteran's Administration or the Department of Defense.

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## **120.14 Verification of Immigration Status (continued)**

### **3. Asylee**

- (a) \*INS Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA
- (b) \*INS Form I-688 B (Employment Authorization Card) annotated "274a.12(a)(5)"
- (c) INS Form I-766 (Employment Authorization Document) annotated "A5"
- (d) Grant letter from the Asylum Office of INS; or
- (e) Order of an immigration judge, granting asylum.
- (f) To determine the time limit for the applicable program: The INS form I-94, the INS grant letter, and court order will each include the date the asylee's status was obtained. If the applicant cannot provide any of these documents, file an INS form G-845 and Supplement along with a copy of pertinent documents.

### **4. Refugee**

- (a) \*INS Form I-94 annotated with a stamp showing admission under section 207 of the INA;
- (b) INS Form I-688 B (Employment Authorization Card) annotated "274a.12(a)(3)" is obsolete effective October 1, 2006.
- (c) \*INS Form I-766 (Employment Authorization Document) annotated "A3"
- (d) INS-Form 571 (Refugee Travel Document)
- (e) To determine the time limit for the applicable program: The date of the inspection on the refugee stamp on the INS form I-94 indicates the date of admission as a refugee. If the date is missing or applicant cannot provide an I-94, file an INS Form G-845 and Supplement along with a copy of pertinent documents.

### **5. Immigrant Whose Deportation or Removal was Withheld**

- (a) \*INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(10)" is obsolete effective October 1, 2006
- (b) INS Form I-766 (Employment Authorization Document) annotated "A10"
- (c) Order from an immigration judge showing deportation withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under section 241(b)(3) of the INA
- (d) To determine the time limit for the applicable program: The court order will include the date the deportation was withheld. If the applicant does not present a court order, file an INS form G-845 and Supplement along with a copy of pertinent documents.

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## 120.14 Verification of Immigration Status (continued)

### 6. Cuban/Haitian Entrant

- (a) \*INS Form I-551 (Alien Registration Card) with a code CU6, CU7, or CH6
- (b) Unexpired temporary I-551 stamp in a foreign passport or on INS Form I-94 with the code CU6 or CU7, or
- (c) \*INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.
- (d) To determine the time limit for the applicable program: The I-551 or the date of inspection on the stamp on INS form I-94 will indicate the date status was granted. If the date is missing, on form I-94, file an INS form G-845 and Supplement along with a copy of pertinent documents.

### 7. Amerasian Immigrants

- (a) \*INS Form I-551 with the code AM6, AM7, or AM8,
- (b) Unexpired temporary I-551 stamp in foreign passport, or
- (c) \*INS Form I-94 with unexpired stamp with code AM1, AM2, or AM3.
- (d) To determine the time limit for the applicable program: The date on the INS Form I-551 or the date of inspection on the stamp on the INS Form I-94 will indicate the date of admission. If the date is missing on the I-94, file a G-845 and Supplement, along with a copy of the pertinent documents.

### 8. Section 289 Exception

- (a) Section 289 of the INA allows certain American Indians born in Canada to enter the U.S. freely.
- (b) Section 289 immigrants do not have to be qualified immigrants for this exception to apply and they may or may not carry evidence of alien registration.
- (c) Since section 289 immigrants do not have to be qualified immigrants and may or may not have evidence of alien registration, the document requirements are somewhat different. The following documents verify the status of section 289 immigrants:
  - (i) An unexpired I-551 with the code S13.
  - (ii) An unexpired temporary I-551 stamp in a Canadian passport or on I-94 with the code S13, or
  - (iii) A letter of other tribal document certifying at least 50 percent Indian blood as required by section 289 of the Act, combined with a birth certificate or other evidence of birth in Canada.

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## **120.14 Verification of Immigration Status (continued)**

### **9. Members of Indian tribes**

- (a) An immigrant may be eligible because he or she is a member of an Indian tribe, regardless of whether the applicant is a qualified immigrant.
- (b) If an applicant claims to be eligible on this basis, request the applicant to present a membership card or other tribal document demonstrating membership in an Indian tribe.
- (c) If an applicant has no documentation of tribal membership, the local department should contact the Indian tribe for verification.

### **10. Iraqi and Afghan Special Immigrants (SIVs)**

- (a) Consider SIVs as eligible for benefits to the same extent and for the same period of time as refugees pursuant to Section 207 of the Immigration and Nationality Act.
- (b) Iraqi or Afghan SIV status can be verified through forms I-94 or I-551 listed in 120.3 or by an Iraqi or Afghan passport with an immigrant visa stamp noting that the individual has been admitted under IV (Immigrant Visa) Category SI1 or SQ1.

### **11. Hmong and Highland Laotians**

- (a) Verification of eligibility should only be undertaken if the tribal member is not a citizen and is not eligible under any other immigrant category, unless the verification is necessary to determine eligibility of other household members or applicants who are applying as a separate household from the tribal member to whom they are related.
- (b) A Hmong or other Highland Laotian who is not a U. S. citizen is eligible to receive FSP benefits if the individual meets the normal FSP financial and work requirements, and:
  - (i) Is legally residing in the United States;
  - (ii) Was born before 5/8/75;
  - (iii) Was born in Laos (or another country with Hmong or other Highland Laotian populations and can give a reasonable explanation as to why he or she was not born in Laos (the countries include Thailand, Cambodia, China, Vietnam, Philippines, Indonesia, Hong Kong, Malaysia, and Singapore));
  - (iv) Has a refugee code RE1, RE2, RE3, RE6, RE7, R86, IC6, or IC7, or can give a reasonable explanation of his or her immigration to the U.S. (for example, sought asylum in another country and later immigrated to the U.S.);

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## 120.14 Verification of Immigration Status (continued)

- (v) Entered the U.S. in April 1975 or later (or can give a reasonable explanation for having entered before that, such as came here as a student, for military training, to escape the war, and so on); and
- (vi) Signs an affidavit swearing under penalty of law that he or she was a member of a Hmong or Highland Laotian tribe between 8/5/64 and 5/7/75.

(c) A member of a Hmong or Highland Laotian tribal member's family who is not a U. S. citizen is eligible for FSP benefits if the individual meets the regular FSP work and financial eligibility requirements, and:

- (i) Is also a tribal member; or
- (ii) Is the spouse, unremarried widow or widower of a tribal member who has died, or unremarried dependent child of a tribal member, and verifies status as a member of the tribal member's family.

Note:

- Divorced spouses do not qualify as family members.
- A member of the family of a tribal member who has died need not show that the tribal member was legally residing in the U.S.

12. Qualified Immigrants Lawfully Residing in the United States on August 22, 1996.

(a) Certain immigrants, if qualified, are eligible for FSP benefits if they were residing in the U.S. on August 22, 1996.

(b) Verification of Lawful Residence

- (i) If the case manager verifies that an immigrant was qualified on August 22, 1996, it is not necessary to perform further verification of lawful residence.
- (ii) If the immigrant was not a qualified alien on August 22, 1996, or was a qualified alien on the basis of being battered, the case manager must verify that the immigrant was:
  - Lawfully present on that date by checking the immigrant's INS status at that time (see attached chart), and
  - In the U.S. on that date by reviewing proof of residence.

C. If the INS form presented by the immigrant does not bear annotations needed to verify eligibility, and the individual can provide no other document, advise the immigrant:

1. To obtain from INS Form G-641, Application for Verification of Information

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## **2. 120.14 Verification of Immigration Status (continued)**

from U.S. Citizenship and Immigration Services (USCIS) Records. Once completed by USCIS, accept this form when presented by the immigrant as evidence of status when properly annotated at the bottom by an USCIS representative;

3. If appropriate, that the individual may be eligible if acceptable verification is obtained; or
4. That the immigrant may contact USCIS or otherwise obtain the necessary verification, or if the immigrant wishes and signs a written consent, the local department will contact USCIS to obtain clarification of the immigrant's status.

## **120.15 Responsibility of the Local DSS to Obtain Verification**

- A. If an immigrant is unable or unwilling to provide a USCIS document or other acceptable verification showing immigrant status, the individual is ineligible. Do not continue efforts to obtain documentation.
- B. The responsibility of the local department exists only when the immigrant has an USCIS document that does not clearly indicate eligible or ineligible immigrant status.
- C. Do not contact USCIS to obtain information about the immigrant's correct status without the individual's written consent. If the customer refuses to allow USCIS to be contacted he is not eligible for FS. Note that immigrants may contact USCIS online. Offer to help them use the myDHR lab to go to <https://www.uscis.gov>.

## **120.16 Status of Household while Awaiting Verification of Eligible Immigrant Status**

- A. Note that the availability of immediate online verification at [www.uscis.gov](http://www.uscis.gov) should prevent the need for waiting for verification. If, in the unlikely situation where you cannot access and must wait for acceptable verification, an immigrant is ineligible until acceptable documentation is provided unless:
  1. The local department has submitted a copy of a document provided by the household to USCIS for verification;

Do not delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of immigration status.



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2. The applicant or local department has submitted a request to the Social Security Administration for information regarding the number of creditable quarters of work, SSA has responded that the immigrant has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited; or

If SSA indicates that the number of qualifying quarters that can be credited is under investigation, the local department must certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters.

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### **120.16 Status of Household while Awaiting Verification of Eligible Immigrant Status (continued)**

3. The applicant or local department has submitted a request to a federal agency for verification of information that has a bearing on the individual's immigrant status.
- B. Certify the individual pending the results of the investigation for up to six months from the date of the original request for verification.
- C. When an immigrant in the household is ineligible, determine the eligibility of the remaining household members. Treat income and resources in the same manner as an ineligible immigrant as described in section 108.5.
- D. If the local department subsequently receives verification of eligibility, act on the information as a reported change in household composition.
- E. The local department must give immigrant applicants a reasonable opportunity to submit acceptable documentation of their immigrant status as of the 30<sup>th</sup> day following the date of application. This means the local department must give the immigrant at least 10 days from the date of the request for verification.

### **120.17 Ineligible immigrants**

- A. Ineligible immigrants include all other immigrants. For example:
  1. Visitors, tourists, students, and diplomats,
  2. Those admitted under color of law,
  3. Immigrants who have applied for eligible status but who have not been approved (except for battered spouses and children with a military connection), and
  4. Immigrants who have a questionable or unverified status.
- B. An immigrant can apply on behalf of other people in the household. Under federal law, you may only verify the immigration status of the people who will actually receive benefits.

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## 120.18 Reporting Illegal Immigrants

- A. Report to of the U.S. Citizenship and Immigration Services (USCIS) **only** when the local department "knows" that someone is not lawfully present in the United States. "Knowing" means that the person is subject to an order of deportation. Otherwise, case managers are not to notify the Citizenship and Immigration Services.
- B. **Do not make a determination that an individual is in violation of the Immigration and Nationality Act merely because of the immigrant's inability or unwillingness to document his/her immigrant status. When an immigrant is unwilling or unable to provide documentation, classify the individual as ineligible and discontinue efforts to obtain further documentation.**
- C. If the local department determines that a member of a household applying for or receiving FSP benefits is ineligible because the member is presently in the United States in violation of the Immigration and Nationality Act, inform the local USCIS office in writing.

## 120.19 Calculating the Countable Income and Resources from an Ineligible Immigrant

- A. Determine the amounts to be counted by calculating a prorated share of income received by the ineligible member and a prorated share of expenses paid by or billed to the ineligible member as described in section 108.5 of the manual.
- B. Do not count a deemed portion of a sponsor's income in calculating eligibility or benefit level if the sponsored immigrant is not included in the FSP household.
- C. The total value of any resources owned by the ineligible immigrant is counted.

## 120.20 Case Processing

Households with immigrants have many household compositions, which will determine ineligibility or eligibility for FSP benefits.

Example #1: Household A includes a mother and father who are refugees and two citizen children. The entire household is eligible for FSP benefits. Process this case using all income and deductions for the entire household.

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## **120.20 Case Processing (continued)**

Example #2: Household B applied March 3. The household includes a mother age 45 and her 20-year old son. Both are lawfully admitted for permanent residence. Neither applicant has lived in the US in a qualified immigrant status for 5 years. They also do not have 40 quarters or a military connection. The household is not eligible for the FSP.

Example #3: Household C includes a mother, Ms. C and her two children under age 18. All were lawfully admitted for permanent residence on 8/02/01. Ms. C is not eligible because she meets none of the criteria for eligible immigrant status. The children are eligible for benefits. Open the case for the non-citizen children's benefits. Use a 2/3 prorated portion of Ms. C's income and deductions to calculate the State FS benefit for the two children.

Example #4: Household D includes a mother and father and their two children who were lawfully admitted for permanent residence within the last five years. Also in the household is a child born in the US. The children are eligible because they are under age 18. Mrs. D has \$500 monthly unearned income. Mr. D has no income. The rental cost is \$300.

Calculate the benefit for all members who are eligible FSP benefits. The countable income for the three children, using 3/5 of the income is \$300, ( $\$500 \div 5 = \$100 \times 3 = \$300$ ) and 3/5 of the rent is \$180 ( $\$300 \div 5 = \$60 \times 3 = \$180$ ).

Example 5: Ms. E is a battered immigrant according to the criteria described in section 120.13. She is applying for the FSP. The agency determines that she is a qualified immigrant. She has applied for asylum, but the request is still pending a decision. She is not eligible for the FSP until she has an immigration status that makes her eligible.

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**QUALIFIED IMMIGRANT CATEGORIES UNDER THE 1996 WELFARE AND  
IMMIGRATION LAWS**

<b>IMMIGRATION CATEGORY</b>	<b>DESCRIPTION</b>	<b>QUALIFIED IMMIGRANT?</b>	<b>LAWFULLY PRESENT?</b>
<b>Legal Permanent Resident (LPR)</b>	Person granted lawful permanent residence status (green card holders)	yes	yes
<b>Refugee</b>	Person admitted as a refugee (retain refugee exemption for benefits even if subsequently adjust to LPR status)	yes	yes
<b>Asylee</b>	Person granted asylum (retain refugee exemption for benefits even if subsequently adjust to LPR status)	yes	yes
<b>Granted Withholding of Removal</b>	Person granted withholding of removal (formerly withholding of deportation) Retain refugee exemption for benefits even if subsequently adjusts to LPR status.	yes	yes
<b>Parolee for a Year or More</b>	Person who has been paroled into the U.S. for at least one year.	yes	yes
<b>Cuban and Haitian Entrant</b>	Person paroled into the U.S. as a Cuban or Haitian Entrant or any other national from Cuba or Haiti who is the subject of exclusion or removal proceedings or who has an application for asylum pending. Refugee Education Assistance Act of 1980, §501(e)	yes	yes
<b>Amerasian</b>	Child fathered by a U.S. citizen in certain Southeast Asian countries during the years of U.S. conflict in that region. Amerasians were granted LPR status under special provisions of the immigration law; therefore Amerasians are qualified immigrants because they are LPRs.	yes	yes
<b>Domestic Violence Victims (and their Parents or Children)</b>	Domestic violence victims are qualified if: <ul style="list-style-type: none"> <li>• Immigrant has been battered, or immigrant's child or parent has been battered, by spouse, parent or member of family in the same household; and</li> <li>• Immigrant has a pending or approved spousal petition or a petition for relief under the Violence against women's Act; and</li> <li>• Agency providing benefits determines (using Attorney General's guidelines) that need for benefits has substantial connection to battery or cruelty.</li> </ul>	yes	yes

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<b>IMMIGRATION CATEGORY</b>	<b>DESCRIPTION</b>	<b>QUALIFIED IMMIGRANT?</b>	<b>LAWFULLY PRESENT?</b>
<b>Hmong or Lao Tribe Member (Not an Immigration Status)</b>	Member of a Hmong or Lao Tribe during the Vietnam era, when the tribe provided military assistance to the U.S.; eligibility category includes spouse, unremarried surviving spouse, and child of the tribe member. Eligible for FS if are lawfully present in the U.S.	Depends on immigration status	Depends on immigration status
<b>Iraqi and Afghan Special Immigrants</b>	Iraqi and Afghan SIVs and their families are eligible for FSP indefinitely provided that other eligibility requirements are met. See Acceptable Verification for Iraqi and Afghan Special Immigrants below.	yes	yes
<b>Native American</b>	American Indian born in Canada; and certain other tribal members born outside the U.S. Immigration and Nationality Act, §289 and Indian Self-determination and Education Assistance Act of 1996§4(e)	If LPR, yes If not LPR, no	yes
<b>Parolee for Less Than a Year</b>	Alien paroled into the U.S. for less than one year are lawfully present <b>unless</b> they are: <ul style="list-style-type: none"> <li>• paroled for deferred inspection or pending exclusion proceedings, or</li> <li>• paroled into the U.S. for prosecution</li> </ul>	no	yes
<b>Temporary Resident</b>	Alien in Temporary Resident status under the IRCA amnesty program.	no	yes
<b>TPS</b>	Alien in Temporary Protected Status because of conflict in their home country.	no	yes
<b>Family Unity</b>	Family Unity beneficiary under the IRCA amnesty program	no	yes
<b>DED</b>	Alien granted Deferred Enforced Departure	no	yes
<b>Deferred Action Status</b>	Alien granted Deferred Action status pursuant to INS Service Operations Instructions.	no	yes
<b>Spouse/child with adjustment Status Pending</b>	Alien who is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status.	no	yes
<b>Asylum or Withholding of Removal Applicant</b>	Applicant for asylum or withholding of removal (formerly withholding of deportation) who has been granted employment authorization. Applicants for these statuses under age 14 whose application has been pending for at least 180 days also treated as lawfully present.	no	yes
<b>In Status Alien</b>	Alien who has been inspected and admitted to the U.S. (in a category other than those listed above) and has not violated the terms of their status.	no	yes
<b>Undocumented</b>	Person who entered the U.S. without	no	NO

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<b>Immigrant</b>	inspection (EWI) or entered lawfully and have overstayed their visa.		
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### Citizenship and Eligible Immigrant Status

A person must be a US citizen or an eligible immigrant to qualify for the Food Supplement Program	
<b>A. Except as provided in Section B, below, an immigrant must be both a qualified alien as specified in column 1 and meet the special FSP criteria in column 2 to be eligible.</b>	
Column 1—Qualified Alien	Column 2—Special FSP Criteria
<ol style="list-style-type: none"> <li>Asylee granted under section 208 of INA</li> <li>Refugee admitted under section 207 of INA (note: Trafficking Victims Protection Act of 2002 requires victims to be treated as refugees.)</li> <li>Deportation withheld under 243(h) or 241(b)(3) of INA</li> <li>Cuban or Haitian entrant as defined in 501(e) of Alien Refugee Education Assistance Act of 1980 (AREAA)</li> <li>Amerasian immigrant under 584 of Foreign Operations, Export Financing and Related Program Appropriations Act</li> <li>Lawfully admitted for permanent residence (LPR)</li> <li>Paroled under section 212(d)(5) of INA for at least one year</li> <li>Granted conditional entry under 203 (a)(7) of INA</li> <li>Battered spouse, battered child, or parent or child of a battered person with a petition pending under 204(a)(1)(A) or (B), or 244(a)(3) of INA</li> </ol>	<p>➤ <b>Qualified Aliens 1—5 are eligible <i>immediately and indefinitely, even after they adjust to lawful permanent resident (LPR) status. No special criteria.</i></b></p> <p>➤ <b>Qualified aliens 6—9 must meet <i>one of the criteria below to be eligible for FSP:</i></b></p> <ul style="list-style-type: none"> <li>^ Lawfully in US as a qualified alien for at least 5 years</li> <li>^ Lawfully in US regardless of date of entry and under 18, until 18th birthday</li> <li>^ Lawfully in US regardless of date of entry and receiving federal disability benefits</li> <li>^ Lawfully in US on 8/22/96 &amp; 65 or older on 8/22/96</li> <li>^ LPR who can be credited with 40 quarters of work (sum of person, parent &amp; spouse)</li> <li>^ Military connection (veteran, active duty, spouse and children)</li> </ul>
Remember: To obtain history of immigrant's status, complete SAVE or ask for G-845 Supplement.	
Remember: An alien must be <b>both</b> qualified (column 1) <b>and</b> special (column 2) to be eligible.	
<b>B. The following immigrants are eligible even if they are not qualified aliens as specified in column 1, and they may be eligible for an indefinite period of time:</b>	
10. Certain Hmong or Highland Laotians (and spouse and children). Many are admitted as refugees.	

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11. American Indians born in Canada to which section 829 of INA applies, and members of an Indian tribe as defined in section 4(e) of Indian Self-Determination and Education Assistance Act (Cross-border Indians).

**C. Ineligible immigrants include all other alien statuses. For example:**

12. Visitors, tourists, students and diplomats  
 13. Aliens residing under Color of Law  
 14. Undocumented immigrants  
 15. Immigrants who have applied for eligible status but who have not yet been approved  
 16. Immigrants whose status is questionable or unverified

DESK GUIDE TO IMMIGRANT ELIGIBILITY EFFECTIVE 10/1/03			
Immigration Status	Eligible?	Subject to:	
		5-year Bar	Sponsor Deeming
Immigrants who are eligible			
Naturalized U.S. Citizens	Yes	No	No
Immigrants who entered the U.S. prior to December 19, 1997 and who have been in a qualified status for 5 or more years	Yes	No	No
➤ Refugees, ➤ Asylees, ➤ Amerasians, ➤ Cuban/Haitian entrants, ➤ Trafficking victims, ➤ Immigrants whose deportation is withheld	Yes	No	No
Lawful permanent residents (LPR) with 40 quarters	Yes	No	No
Lawfully residing Hmong or Laotian tribe members	Yes	No	No
Cross-border Native Americans	Yes	No	No
Immigrants who are eligible with certain restrictions			
Immigrants who entered the U.S. after December 19, 1997 and whose sponsor <b>did not</b> sign an enforceable affidavit of support	Yes	Yes	No
Immigrants who entered the U.S. after December 19, 1997 and whose sponsor <b>signed</b> an enforceable affidavit of support.	Yes	Yes	Yes
Qualified immigrants with a military connection	Yes	No	Yes
Qualified immigrants under 18 years of age.	Yes	No	No
Qualified Elderly Immigrants born on or before 8/22/31 who were lawfully residing in the U.S. on 8/22/96.	Yes	No	No
Qualified immigrants who are disabled	Yes	No	Yes



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receiving federal disability benefits			
<b>Ineligible Immigrants</b>			
Non-qualified immigrants who are lawfully residing in the U.S.	No		
Undocumented immigrants	No		

### ACCEPTABLE VERIFICATION FOR IRAQI AND AFGHAN SPECIAL IMMIGRANTS

<b>Applicant</b>	<b>Documentation</b>
Principal Applicant Iraqi or Afghan Special Immigrant	Iraqi or Afghan passport with an immigrant visa stamp noting that the individual has been admitted under IV (Immigrant Visa) Category SI1 or SQ1  and DHS stamp or notation on passport or I-94 showing date of entry
Spouse of Principal Applicant Iraqi or Afghan Special Immigrant	Iraqi or Afghan passport with an immigrant visa stamp noting that the individual has been admitted under IV (Immigrant Visa) Category SI2 or SQ2  and DHS stamp or notation on passport or I-94 showing date of entry
Unmarried Child Under 21 Years of Age of Iraqi or Afghan Special Immigrant	Iraqi or Afghan passport with an immigrant visa stamp noting that the individual has been admitted under IV (Immigrant Visa) Category SI3 or SQ3  and DHS stamp or notation on passport or I-94 showing date of entry
Principal Applicant Iraqi or Afghan Special Immigrant  Principal Adjusting Status in the U.S.	DHS Form I-551 ("green card") showing Iraqi or Afghan nationality (or Iraqi or Afghan passport), with an IV (Immigrant Visa) code of SI6 or SQ6
Spouse of Principal Applicant Iraqi or Afghan Special Immigrant in P6 Category	DHS Form I-551 ("green card") showing Iraqi or Afghan nationality (or Iraqi or Afghan passport), with an IV (Immigrant Visa) code of SI7 or SQ7
Unmarried Child Under 21 Years of Age of Iraqi or Afghan Special Immigrant in P6 Category	DHS Form I-551 ("green card") showing Iraqi or Afghan Nationality (or Iraqi or Afghan passport), with an IV (Immigrant Visa) code of SI9 or SQ9